

Army  
FOIA/Privacy/Records  
Management Course

FOIA Fee  
Determinations

# FOIA Fee Determinations

## Resources

1. Chapter VI, AR 25-55 and your FOIA Officer
2. DOJ Guide to the FOIA
3. OMB Guidelines, 52 Fed. Reg. 10012-20 ( Mar. 27, 1987)



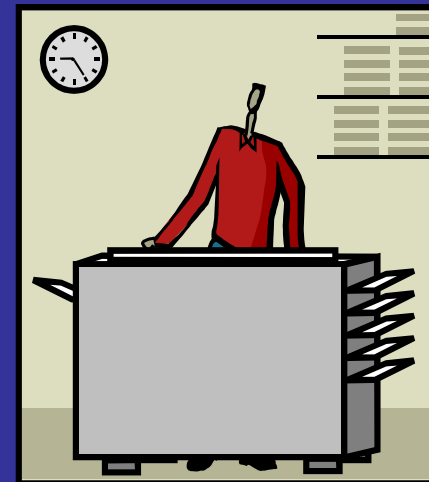
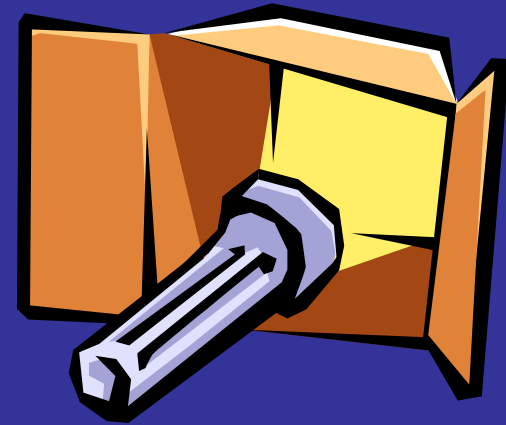
# FOIA Fee Determinations

## Three Types of Fees

Search

Review

Duplication



# FOIA Fee Determinations

## Three Types of Requester

### 1. Commercial



# FOIA Fee Determinations

## Three Types of Requester

### 2. Favored

#### A. Educational

#### B. Scientific

#### C. Media



# FOIA Fee Determinations

## Three Types of Requester

### 3. All others



# FOIA Fee Determinations

## Applicable Fees

Commercial – search, review, and duplication

Favored – duplication only (over 100 pages)

All Others – search (over 2 hours) and duplication (over 100 pages)





# FOIA Fee Determinations

## Special Fee Issues



Minimum fee amount

Limitations on advanced fees

Generally may charge only after  
work done

Aggregation of fees may be  
permissible

Fee based on real party in interest



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Fee Penalties for Tardy  
Processing

Commercial – review and  
processing (no search)

Favored – no fees (no duplication)

All Others – duplication over  
pages (no search)



# FOIA Fee Determinations

## Exceptions to Fee Penalties

1. “Unusual circumstances”: search field installations, consult with other agencies or components, or records are voluminous
2. “Exceptional circumstances”: delay not caused by predictable agency workload or agency has demonstrated reasonable progress in reducing its backlog

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## Fee Waivers

A fee waiver is required “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”



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## Fee Waivers

Work saver: skip fee waiver analysis if waiver wasn't requested or if there are no fees to be assessed



# FOIA Fee Determinations

## Fee Waiver Factors

Identifiable operation of the agency?

New and meaningful information?

Contribute to the understanding of the public at large?

Add significantly to public understanding?

Is this a commercial endeavor?

If so, will public be primary beneficiary?

# FOIA Fee Determinations

## Other Fee Waiver Issues

Public at large is not limited to the U.S.

Library dissemination is insufficient

Financial status is irrelevant

News media assumed to be able to understand and disseminate records

May ask free lance journalist for his or her prior publication history